

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 97-60**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of sales tax to direct mailing services.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

ABC ("the Taxpayer") is a Tennessee company which does business in and out of state. The Taxpayer provides consulting services with respect to planning direct mail campaigns for clients both in and out of state. The Taxpayer also provides database analysis for clients. Both consulting services and database analysis services are obtained by a separate contract without the provision of any other service. A partial contract was provided that described consulting and analysis services rendered by the Taxpayer to its clients.

The Taxpayer designs and supplies copy for inserts that the client may send by direct mail to consumers in and out of state. Additionally, the Taxpayer contracts with third parties in and out of state for all printing or mail shop services related to a direct mail campaign. Mail shop services, which are invoiced separately from printing services, include data processing, laser personalization, and a mail drop. A partial contract describing mail shop and printing services rendered by third parties for the Taxpayer was also submitted. It is further assumed that because this is a contract between the Taxpayer and a third party, this contract is separate and independent of the contracts between the Taxpayer and its clients for consulting and/or analysis services described above. The Taxpayer also provides clients with printed materials for their own use.

It is assumed for the purposes of this Ruling that the Taxpayer is not an advertising agency whose services are subject to TENN. COMP. R. & REGS. 1320-5-1-.99.

ISSUES

1. Whether consulting services for planning direct mail campaigns are subject to tax.
2. Whether database analysis services are subject to tax.
3. Whether designing and supplying copy to clients for inserts is subject to tax.
4. Whether printing or mail shop services provided by in and out of state companies are subject to tax.
5. Whether providing clients with printed material for their own use is subject to tax.

RULINGS¹

1. Consulting services for planning direct mail campaigns that are not combined with taxable services or sales are not subject to tax.
2. Database analysis services that are not combined with taxable services or sales are not subject to tax.
3. Designing and supplying copy to clients for inserts is subject to tax.
4. Charges for printing services are subject to sales tax if title or possession passes in Tennessee. Mail shop services are subject to tax if they are related to or combined with the sale of printed material. This Ruling does not address the tax liability of ABC's clients.
5. If the Taxpayer charges the clients for the printed materials provided, sales tax is due.

ANALYSIS

Tenn. Code Ann. § 67-6-201 declares the business of selling tangible personal property at retail to be a taxable privilege. A "sale at retail" is defined by Tenn. Code Ann. § 67-6-102(23)(F) to include certain services. If a service is not specifically subject to tax or rendered incident to either the sale of tangible personal property or an activity which is taxed, no tax is due.

¹ The Rulings are based on the assumptions as stated in the facts. To the extent that the entire contract(s) for each type of service rendered by the Taxpayer for its clients may be inconsistent with the assumptions expressed herein, the Rulings could result in a different conclusion.

1. The Taxpayer renders consulting services for planning direct mail campaigns. Consulting services are neither listed as a taxable service nor result in the sale of tangible personal property. As stated above, the partial contract provided indicates that these services are not combined with any taxable service or the sale of tangible personal property, such as the designing and supplying of copy to clients. Accordingly, charges for consulting services for planning direct mail campaigns are not subject to tax.

2. Similarly, database analysis services, neither combined with a taxable service nor resulting in the sale of tangible personal property, are not subject to tax.

3. Designing and supplying copy to clients for inserts is also not specifically listed as a taxable service. The true nature of the transaction, however, is not solely the design of the inserts, but supplying copy as the tangible result of the designs. See *Thomas Nelson, Inc. v. Olsen*, 723 S.W. 2d 621 (Tenn. 1987). Design services are necessarily part of providing clients with copy and constitute a crucial element of the fabrication of tangible personal property. Accordingly, charges for this service are subject to tax.

4. Generally, services are not taxable unless they are rendered in Tennessee. Charges for printing services may be subject to Tennessee tax if title or possession of the printed items passes in Tennessee. Mail shop services are taxable if related to or combined with the sale of the printed material. This ruling does not address tax obligations of the Taxpayer's clients with respect to items mailed into Tennessee.

Printing services result in the fabrication of tangible personal property. When these services occur in Tennessee, charges for printing are subject to tax unless the Taxpayer has a resale certificate and resells the printed material to its clients. If the materials are resold, then the Taxpayer must collect tax from the clients. Mail shop services, which are invoiced separately from printing services and include data processing, laser personalization, and a mail drop, are not subject to Tennessee sales tax.

5. Printed materials are tangible personal property, the sale or use of which is subject to tax. If the printed materials are sold to clients, the Taxpayer may purchase the items on a resale certificate and must collect sales tax from the customer. If the materials are given to clients, the Taxpayer, as the user and consumer of the materials, must pay use tax. TENN. COMP. R. & REGS. 1320-5-1-.49.

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APPROVED: _____
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